

INTRODUCTION

The *rahui*: A tool for environmental protection or for political assertion?

Tamatoa Bambridge

This collection deals with an ancient institution in Eastern Polynesia called the *rahui*, a form of restricting access to resources and/or territories. Strictly speaking, even though several new meanings have been added throughout history,¹ the definition of *rahui* has essentially been the same since the mid-nineteenth century. The Polynesian Lexicon (Pollex) proposes the protoform *raafui* for East Polynesia and gives the restrictive definition ‘prohibit’. According to the Pollex, *rahui* is variously defined as ‘prohibit’ (Easter Island), ‘prohibition or restriction laid on hogs, fruit ... by the chief’, ‘to lay on such a *rahui*’ (Tahiti), or as ‘a restriction’ (Manihiki–Rakahanga). These definitions are applicable to the whole geographical area of Eastern Polynesia.²

Most authors agree that concepts like *mana*, *tapu* and others can only be fully understood when viewed in combination as interrelated and mutually influential concepts that are central to Polynesian perceptions

1 Maxwell, K.H. & Penetito, W., 2007. ‘How the use of *rāhui* for protecting taonga has evolved over time’. *MAI Review* 2: 1; www.review.mai.ac.nz.

2 Dieffenbach, E., 1843. ‘Dictionary, PART III: Grammar and Dictionary’, in *Travels in New Zealand with Contributions to the Geography, Geology, Botany, and Natural History of that Country*, Vol. II. London, England: John Murray, Albemarle Street; Davies, J., 1851. *A Tahitian and English Dictionary with Introductory Remarks on the Polynesian Language and a Short Grammar of the Tahitian Dialect*. Tahiti, printed at the London Missionary Society’s Press.

of their social, political, spiritual and natural worlds.³ In one sense, *tapu* is the state of a person, thing, place or period where *mana* (power from divine influence) is present. Another meaning of *tapu* is 'forbidden to certain categories of persons in specific contexts'.⁴

In the literature, *tapu* (a sacred prohibition) and *rahui* are considered fundamental institutions in Polynesia and are often defined as synonymous. From this perspective, in relation with *tapu*, *rahui* appears as a form of *tapu* applied to a class of resources or to a territory. A *rahui* allows for *mana* to be present among resources or on a territory. Nevertheless, through the case studies that are presented in this book, the difference between *tapu* and *rahui* may not only be a matter of degree ('*rahui* as a form of *tapu*'). There is also a difference in nature. As a matter of fact, the prohibition reflects a power or an authority and these concepts also need to be related to the enactment of sociopolitical groups.⁵ *Tapu* and *rahui* appear as two types of prohibition, reflecting two types of political and religious power. As Ottino-Garanger, Ottino-Garanger, Rigo and Tetahiotupa indicate:

In Polynesia, as in many cultures, power was both political and religious. Yet, it is important to distinguish between what is in the nature of *tapu*, which has to be obeyed by all components of society ... and what is the result of decisions made by those in whom sacred power is vested and who subject others to provisional prohibitions that, to their minds, seem to be required by a political, weather-related or environmental situation. In times of food shortage, drought, in anticipation of sumptuary ceremonies, for prestige reasons or in order to save resources, Marquesan *haka'iki* (*ariki*, Society Islands) or *tau'a* (sacred, specialist priest) are empowered to impose *kahui* (*rahui*, Society Islands).⁶

In the first case, the prohibition is governed by the sacred nature of the object, whereas, in the second case, the prohibition is controlled by strategies related to political and sacred power.

3 Firth, R., 1940. 'The analysis of mana: an empirical approach'. *Journal of the Polynesian Society* 49: 483–510; Keesing, R.M., 1984. 'Rethinking mana'. *Journal of Anthropological Research* 40(1): 137–56; Shore, B., 1989. 'Mana and Tapu: a new synthesis'. In Alan Howard and Rob Borofsky (eds), *Developments in Polynesian Ethnology*. Honolulu: University of Hawai'i Press, pp. 137–74.

4 Bambridge, T. & Vernaudo, J., 2012. 'Espace, histoire et territoire en Polynésie: une appropriation foncière de l'espace terrestre et marin'. In E. Le Roy (ed.), *La Terre et l'homme*. Paris: Editions Khartala, pp. 33–53.

5 Firth, 1940.

6 See Chapter 3, this volume.

In the Polynesian context, *tapu* or *rahui* have less to do with a mystical abstract power than with the manifestation of efficiency in such domains as success, health, food and fertility.

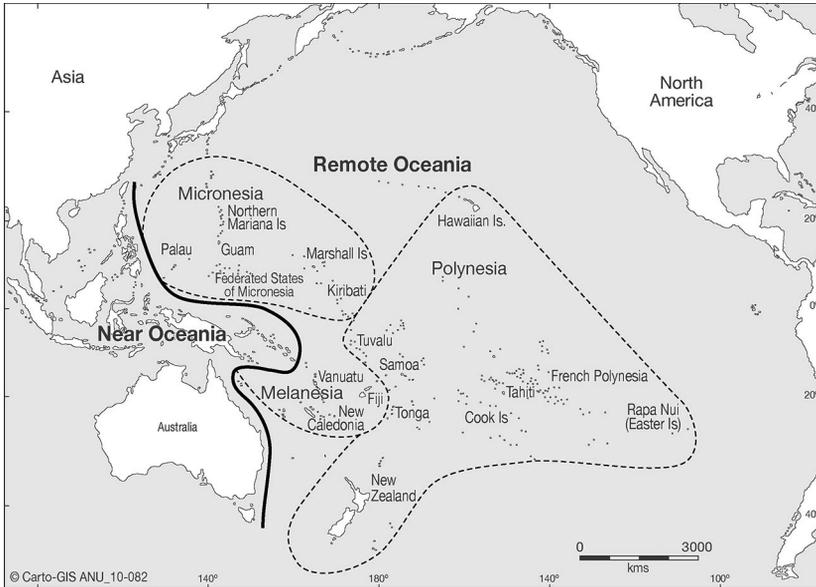


Figure 1: Map of Eastern Polynesia in Oceania

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Based on fieldwork in the Marquesas, Tuamotu and Society islands archipelagos, the first essays in this volume from — Rigo; Torrente; Ottino-Garanger et al.; and Bambridge — revisit concepts such as *tapu* and *rahui* from nineteenth-century sources. The chapters from Ottino-Garanger et al. and Torrente are especially based on primary sources from insiders (Tuamotu) or first settlers or explorers (Marquesas) who, in the case of the Marquesas, were mainly Catholic. These chapters offer a reconstruction of the *rahui* institution from sources that have not previously been used or revealed.

While *tapu* has been extensively discussed in the scientific literature on Oceanian anthropology, the *rahui* is absent from secondary modern literature. This situation is problematic because individual actors, societies and states in the Pacific are readapting such concepts to their current needs, such as environment regulation or cultural legitimacy.

Many contemporary Polynesian states and local communities have re-established the *rahui*, mainly to facilitate more sustainable management of their resources and environment. In addition to covering this aspect of *rahui*, most of the chapters in this collection ask another fundamental question: What of the political dimension of the *rahui*? Indeed, the *rahui* was traditionally linked to the *tapu*, which was a form of political assertion when imposing restrictions on specific resources.⁷ The political implication of the *rahui* are still relevant today as modern states — and indigenous communities in Eastern Polynesia conceptualise *rahui* from a political perspective rather than from an environmental one.

Taking the political orientation into account, this book assembles a comprehensive collection of current works on the *rahui* from the perspective of legal pluralism. Most authors more or less agree with the definition of legal pluralism that is suggested by Griffith, which is ‘the coexistence within a social group of legal orders that do not belong to a single “system”’.⁸ This definition, when linked to the study of the *rahui*, has two advantages. First, it allows us to analyse to what extent pre-European Polynesian society was dominated by a context of legal pluralisms in keeping with the diffusion of power and authority within the social structure.⁹ Second, it allows us to pursue the study of legal pluralism in Polynesian society in a situation where the notion of legal centralism based on state authority has prevailed from the nineteenth century until today.¹⁰ Furthermore, this descriptive definition of legal pluralism encourages the elaboration of a legal anthropological theory that is neither normative nor ideologically linked to the exclusive definition of law that is usually given by the state.¹¹ With this shared perspective, the following chapters also tackle various theories

7 Best, E., 1904. ‘Notes on the custom of Rahui, its application and manipulation, as also its supposed powers, its rites, invocations and superstitions’. *Journal of the Polynesian Society* 13(2): 83–88; Oliver, D., 1974. *Ancient Tahitian Society*. Honolulu: The University Press of Hawai‘i.

8 Griffith, J., 1986. ‘What is legal pluralism?’ *Journal of Legal Pluralism* 24: 8.

9 Firth, R., 1965. *Essays on Social Organization and Values*. Monograph on social anthropology no. 28. University of London, London School of Economics: The Athlone Press.

10 Bambridge, T., 2009. *La terre dans l’archipel des îles Australes. Étude du pluralisme juridique et culturel en matière foncière*. Institut de Recherche pour le Développement (IRD) et Aux Vents des îles; Bambridge, T., 2007. ‘Généalogie des droits autochtones en Nouvelle-Zélande (Aotearoa) et à Tahiti (1840–2005)’. *Droits et Sociétés* 22(1).

11 von Benda-Beckmann, F., 2002. ‘Who’s afraid of legal pluralism?’ *Journal of Legal Pluralism* 47: 37–83; von Benda-Beckmann, F. & K., 2006. ‘The dynamics of change and continuity in plural legal orders’. *Journal of Legal Pluralism* 53–54: 1–44.

and methodologies while stressing the mutual relevance of diverse historical, cultural and political dimensions. This study, therefore, aims to contribute to the renewal of debate on the core problems and analytical methods of legal pluralism.

While studying the *rahui* in the realm of environmental management, the following chapters demonstrate that the political dimension remains important to both states and the local communities. This volume underlines the new assertion of identity that has flowed from the cultural dimension of the *rahui*. Today, *rahui* have become a means for indigenous communities to be recognised on a political level. Some indigenous communities choose to restore the *rahui* in order to preserve political control of their territory or, in some cases, to get it back.¹² On a political level, Chambers examines the *rahui* in Tongareva through the changes in power structure that led to unification. After the 1889 annexation by the British, a council of elders — called *hau* — was created. This was replaced by the council of the island in 1901 and was put under the authority of the central government of the Cook Islands in 1957.

For the state, better control of the *rahui* represents a way of asserting its legitimacy and its sovereignty in the face of this reassertion by indigenous communities (see essays by Thorax; Ruru and Wheen; Friedlander, Shakeroff and Kittinger; Mawyer; and Chambers).

While there is broad general agreement over the meaning of the *rahui*, the historical context varies considerably between localities. The states in the Pacific region are subjected to a ‘double bind’¹³ at the local and international levels. On the one hand, local communities have realised the importance of environmental legitimacy as a way of strengthening their political voice. On the other hand, states must take into consideration several international pressures. As early as 1975, the International Union for the Conservation of Nature and Natural Resources (IUCN) adopted a resolution that sought to conciliate the rights of indigenous peoples and the principles of environmental preservation. In 1996, the World Wildlife Fund for Nature (WWF) approved a declaration of principles that supported the United Nations

12 See Chapters 7 and 8 in this volume; Mawyer, A., 2006. “‘TV Talk’ and Processes of Media Receptivity in the Production of Identities in the Gambier Islands, French Polynesia”. PhD thesis. The University of Chicago.

13 Elias, N., 1993. *Engagement et distanciation*. Paris: Fayard, pp. 69–169.

Declaration on the Rights of Indigenous Peoples. In 1999, the World Commission on Protected Areas (WCPA) — one of the six commissions of the IUCN — advocated the joint management of protected areas. In these circumstances, the notion of legal pluralism — linked to the tradition of the *rahui* — has been relevant to academic research as well as to local, national and regional institutions. Legal pluralism also gained new meanings. Before European influences in Polynesia, legal pluralism was associated with the fact that sociopolitical groups had multiple ways of organising authority over *rahui*, and multiple ways to implement sanctions about infringing *rahui* regulations. Today, legal pluralism has moved from within communities to between communities and is more concerned with state–custom interactions at local, national and international levels. New actors, such as non-government organisations (NGOs), also have the capacity to influence internal regulations as well as providing new models for regulating society–resources–culture interactions.

The authors in this book discuss *rahui* in light of the main contemporary and scientific issues related to legal pluralism in Eastern Polynesia. They cover a number of environmental and societal contexts within the Pacific from which many more lessons can be learned. The following chapters are the result of intensive fieldwork beginning in the early 2000s in Aotearoa New Zealand, the Cook Islands, Hawai'i, and in the Gambier, Tuamotu and Society islands in French Polynesia.

The authors examine two main issues related to the *rahui*: traditions and social changes and the establishment of legal pluralism within the social changes.

Traditions and pluralistic organisation of society

In the first chapter of this book, Rigo argues that, in order to define a society as pluralistic according to Griffith's terms,¹⁴ one must first analyse its social organisation. Society is pluralistic if organised as such conceptually and practically. Rigo puts the *rahui* in the category of Polynesian political concepts related to the notion of sacredness

14 Griffith, 1986.

and shows the nature of this categorisation. To Rigo, the *rahui* is a sacred institution, not because of the Western dichotomy between the profane and the sacred,¹⁵ but because the whole society revolves around sacredness, specific rites or ceremonies, in which group organisation and leadership networks allow and require upward and downward movements of sacredness. Ancestral characters exist only because living beings affiliated with them make them exist, hence — as the author indicates — the fact that tutelary family gods are sometimes invoked to implement a *rahui* on a specific territory. In this context, ongoing political changes and reorganisation occur that can alter these ancestral affiliations, since society — organised in networks — depends on the chiefs' decisions to create or recreate networks, as new opportunities arise and circumstances dictate.

Torrente offers an ethnographic analysis of the *rahui* in the atoll of Anaa (Tuamotu), based on the vernacular manuscript of Paea-a-Avehe. Torrente emphasises the fact that, if a society is plural from the perspective of its social organisation, the core of its pluralism has to be found in the religious and ceremonial aspects that govern social life. For example, discussing the *tiorega* ritual (the lifting of the *rahui*), he describes the plurality of authorities and powers that receive special acknowledgment through rituals:

Paea talks about a special walled enclosure he calls *marae tiore haga katiga*; *marae* for the offering of first fruits, of which he has left a drawing. He adds that when a coconut tree gave its first ripe nuts (*teke*) they were to be carried to this *marae* and could not be eaten before the rite of the lifting of the prohibition had taken place, otherwise the nuts would be found bad (*kiro*) or would fall down before being ripe, or would be found dry. The *ariki*, the *tahuga* and the principal warrior (*kaito*) were to receive these first fruits before they could be eaten by the common people. The same ritual was practised for the first catches of fish during their period of abundance.¹⁶

15 Rigo, Bernard, 2004. *Altérité polynésienne ou les métamorphoses de l'espace-temps*. Paris: CNRS Editions.

16 See Chapter 2, this volume.

For their part, Ottino-Garanger et al. describe extensively the different occasions where a *rahui* may apply in the Marquesan archipelago. Comparing *tapu* and *rahui*, their conclusion about the pluralistic organisation of Marquesan society has profound consequences for the anthropology of law in the Pacific. As a matter of fact,

tapu's efficiency is predicated on the punishment for transgression. The punishment may be automatic as soon as there is contact with a material that is hazardous in itself: madness, leprosy or blindness, for example. This idea is so deeply rooted that every plague is construed as punishment for a fault. Disease or drought don't necessarily originate in a transgression and it is important to identify its author ... When a *kahui* is involved, the transgression is perceived first as a challenge to the power of the *ariki/haka'iki* or the *tau'a*. Punishment first falls within their competence; it reflects flouted authority and, in the final analysis, the *ariki/haka'iki* or the *tau'a* is seen only as the privileged tool. It is not that the transgression of a perennial *tapu* cannot be punished inasmuch as the whole community is in danger; rather, punitive watchfulness involves first and foremost temporary prohibitions.¹⁷

Focusing on social organisation, my chapter¹⁸ utilises Tahitian historical sources to demonstrate that all leaders, and not exclusively the *ari'i* (chiefs) — the highest status in the hierarchy — had the power to establish a *rahui*. The study of the relationships between the types of territories and the *rahui*, and between family groups and different territories, proves that the *rahui* is fundamentally a political institution that allows the conveyor to affirm control on resources in a specific territory. This plural reality has also been described for the Maori (Aotearoa New Zealand) by Wilson.¹⁹

In many of the territories studied in this book, Polynesian encounters with Europeans significantly transformed the authority and the pluralism that characterised these societies. Indeed, major historical events have altered and have redefined the tradition of the *rahui*. The first major event corresponds to the evangelising process in the Polynesian islands, which led to profound changes in belief systems and the main institutions. Other influential events include drastic

17 See Chapter 3, this volume.

18 Chapter 6.

19 Wilson, 1874, quoted in Frédéric Torrente, 2012. *Buveurs de mers, Mangeurs de terres, Histoire des guerriers de Aana, archipel des Tuamotu*. Pape'ete: Te Pito o te Fenua.

demographic decline and the beginning of international trade. In a more general perspective, the colonisation process — whether it be British or French — affected the political organisation and traditions of indigenous societies.

Among the numerous social changes, Conte's work on the Tuamotu Archipelago reveals how new fishing practices in Tepoto and Napuka modified the practices related to the *rahui*. These new techniques, combined with traditional beliefs, transformed the economy into one revolving solely around economic predation. Traditionally, the end of the *rahui* in the Tuamotu Islands represented the prelude to turtle fishing. According to post-European local beliefs, the turtles were sent to the living by their ancestors, and refusing to catch them was an affront to the ancestors and jeopardised the access to these resources for future periods. Thus, traditional practices become an alibi to justify the commercial activities carried out by the fishermen. The capitalist system implemented by missionaries in the nineteenth century thus diverted the tradition of the *rahui* from its initial principles.

On a political level, Dixon examines the evolution of the *rahui* in Mangaia through the changes in power structures that led to unification. Based on archeological evidence, this work explores the change in *rahui* organisation through the analysis of political changes and how the land is managed today.

Social changes and ambivalent pluralism

Pluralism is historically and geographically dissimilar and often contradictory. Two types of ambivalence within the social sphere can be detected. First, on a historical level, colonial ideology in Polynesia has become a state ideology in various forms. The independent state constantly attempts to maintain a monopoly on the definition and elaboration of environmental norms⁴ in the Pacific. The emerging legal pluralism thus appears as a minimalist one that denies traditional pluralism in Polynesian societies while conceding some autonomy to local communities regarding decision-making and general management. Second, the issues tackled in this book reveal that the *rahui*, while linked to environmental matters, seems above all to represent a political contest between local traditional authorities and the state government, and also between specific individuals. These two

ambivalences — the *rahui* as a political stake and the modern state as the bearer of a disputed centralising ideology — are discussed by means of three theoretical avenues: that of the viewpoints of all categories of individuals (Mawyer); that of institutions (Ruru and Wheen, Thorax, Friedlander, Shackeroff and Kittinger); and that of social organisation (Dixon, Ghasarian, Chambers).

Mawyer's work describes the Gambier archipelago through several historical periods: the renunciation of political power and territorial control by local people in favour of the Catholic community during the first years of the annexation process; the French Government's takeover of territories and the assertion of its sovereignty in marine areas; and the transfer of power over lagoons from the colonial government to the autonomous government of French Polynesia. These different historical configurations blurred identity and social roles among local people. It was unclear who had the right to impose a ban in the lagoon. One may observe that historical research on the jurisdiction of the *rahui* in the lagoon refutes the viewpoints of local actors who do not recognise the power of the Ministère de la Perle in Tahiti, and the government more broadly, to make decisions on public activities in the lagoon.

Mawyer questions the status of historical pluralism in Mangareva from an individual point of view. As far as the implementation of the *rahui* in the lagoon is concerned, he shows the ambivalent — sometimes disturbing — relationships between the individual and the centralised state authority in French Polynesia. As with the situation in Rapa described by Ghasarian, Dixon shows that, in Mangaia, the *rahui* still exists and is under the authority of the council of the island even though this institution was officially abrogated in 1915 (and in 1945 in Rapa).

The emerging legal pluralism, then, appears as a minimalist one which denies the traditional pluralism in Polynesian societies while conceding some autonomy to local communities regarding decision-making and general management. Second, the issues tackled in the essays reveal that the *rahui*, while linked to environmental matters, represents, above all, a political stake between local traditional authorities and the state government, and also among individuals. These two ambivalences — the *rahui* as a political stake and the modern state as the bearer of a disputed centralising ideology — are

discussed along three theoretical analyses: that of the viewpoints of all categories of individuals (Mawyer, Chambers); that of the institutions (Ruru and Wheen); and that of social organisation (Chambers, Ghasarian, Thorax).

This duality of laws — official and unofficial, according to Chiba's terms²⁰ — does not encourage harmonious collaboration between state law and traditional law, but rather confusion and questioning among the people about the real control of the *rahui* today. In Rapa, the identification process is not undermined by confusion or doubt, for the people willingly ignore state regulations and can do so because of the island's relative geographical isolation from the major administrative centres.²¹

Ruru and Wheen emphasise the ambiguities that are found in reinterpretations of the *rahui* in the environmental legislation of the government of Aotearoa New Zealand. At times, the *rahui* is conceded to Maori communities, at other times the Ministry of Fisheries has the monopoly of it, as decreed by the 1996 *Fisheries Act*. With little emphasis on the changes that occurred within institutions, Ruru and Wheen analyse the use of the term *rahui* in the modern legal framework of Aotearoa New Zealand. They demonstrate that, under the aegis of a state institution, its traditional meaning is marginalised.

Friedlander, Shackeroff and Kittinger discuss efforts by the US federal government to incorporate traditional knowledge into marine management. They note, however, that these moves may be less motivated by a desire to set up a new pluralism in state management than to meet a sovereign ambition: to re-establish the federal authority on the north islands of Hawai'i. Friedlander, Shackeroff and Kittinger discuss how traditional ecological knowledge (TEK) is integrated into contemporary Hawai'ian marine resource management, giving rise to challenges deriving from power and politics, postcolonial legacies and epistemological differences.

20 Chiba, M., 1998. 'Droit non-occidental'. In W. Capeller and T. Kitamura, *Une introduction aux cultures juridiques non occidentales. Autour de Masaji Chiba*. Académie Européenne de Théorie du Droit de Bruxelles. Editions Bruylant, pp. 37–44.

21 See also Bambridge, T. & Ghasarian, C., 2002. 'Droit coutumier et législation française à Rapa: les enjeux d'une traduction'. *Droit et cultures*, Traduction et droits 44: 153–81.

Ghasarian describes how the *rahui* functions on a daily basis, and agrees with Friedlander, Shackeroff and Kittinger's conclusions that the *rahui* is respected because customary authorities have maintained the control of their terrestrial and marine territories. The convergence between the control of customary property and that of the *rahui* is all the more relevant on Rapa and in Tongareva as the *rahui* still exists there today — whereas it was officially repealed at the beginning of the century in Aotearoa New Zealand and Hawai'i. The legal pluralisms that emerged from colonial settlements greatly differ from the cooperative type described by Morse.²² The preservation of a traditional institution implies some bypassing, if not some deliberate ignorance of the official laws.

In all the following cases, the preservation of contemporary legal pluralism occurs with the prevalence of a postcolonial ideology that is, by its nature, totalitarian, if we adhere to Weber's definition of the state as 'the centralisation of the legitimate domination'.²³ The dominant modern state has not been weakened in French Polynesia, the Cook Islands, Hawai'i or in Aotearoa New Zealand. The state has never ceased to exercise its prerogatives against the collective rights of indigenous peoples, with the *rahui* being the principal subject of debate.

22 Morse, B.W., 1988. *Indigenous Law and the State*. Foris Publications.

23 Weber, M., 2010. *Economie et Société*. Paris: Editions Flammarion.

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